IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 494 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STANDARD CHARTERED BANK

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 494 of 2003

MR CR ABICHANDANI for Petitioner No. 1

MS. NANDINI JOSHI, APP for Respondent No. 1

MR HASHIM QURESHI for Respondent No. 2

RULE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 07/02/2004

ORAL JUDGEMENT

Heard learned counsel appearing for the

petitioner-Standard Chartered Bank Mr. C.R.Abichandani and learned APP Ms. Nandini Joshi. Respondent No.2 Zahir Rana, though served, has not placed his claim qua the vehicle in question nor the present revision application has been resisted by him.

2. This revision application is listed for final hearing. It is contended by the petitioner Bank that the Bank had approached the learned Chief Metropolitan Magistrate, Ahmedabad for obtaining custody of the vehicle bearing No. GJ-1-HD-7587 (Mitsubishi Lancer) produced before the learned Magistrate in connection with the offence registered vide CR No. I-4/2003 with CID Crime Gandhinagar Zone Police Station. But the request of the Bank made under Section 451 of Code of Criminal Procedure is turned down and the order rejecting the prayer dated 3.10.2003 is therefore challenged.

3. The application has been rejected mainly on the ground that, as per the case of the prosecution, the vehicle in question, prima facie, has been purchased from the amount collected from the public at large and, therefore, it should not be handed over to the petitioner Bank. But, there are ample documentary evidence to show that the vehicle in question was purchased by the accused Zahir Rana by availing a loan facility on 28.2.2003 and, the loan agreement was very well available on record, where, there is, a specific clause that, 'if the Bank's security is jeopardized, the Bank can recall the entire loan'. Undisputedly, the Bank has recalled the entire loan on 2.6.2002 vide legal notice, stating inter alia, that, due to the arrest of the borrower-respondent No.2 Zahir Rana, the Bank's security was jeopardized. The Bank has also attempted to satisfy the Court that not a single instalment was paid by the borrower. So, the vehicle could have been handed over on condition to the applicant Bank.

4. The ratio of the decision of the Apex Court in the case of Sundarbhai Ambalal Desai v. State of Gujarat, 2003 (1) GLH 307 is relevant and it squarely applies to the facts of the present case. The valuable vehicle may get damage and its value positively shall deteriorate if the same is kept unattended in police custody.

5. In response to the query raised by the Court, Mr. Abichandani has fairly accepted that some down payment was made by the borrower and Bank is ready to deposit that amount or any adequate amount, as and when vehicle is sold or otherwise transferred and, till that date,

Bank can be directed to keep the vehicle in reasonable good condition.

6. Say of Ms. Nandini Joshi has some strength that the down payment made by the borrower, at the end of trial, can be held to be an amount collected from public at large. So, that amount, atleast, should be deposited with the trial Court, if the Bank intends to sell or otherwise transfer the vehicle.

7. In view of above, the Court finds that the order passed by the learned Chief Metropolitan Magistrate is erroneous while exercising jurisdiction vested with the Court under Section 451 of the Code of Criminal Procedure. This alternative arrangement could have been worked out especially when the ratio of the decision in above cited case was available with the Court. So, the revision application is allowed. The vehicle lying with the investigating agency is ordered to be handed over to the Bank or any authorised officer of the Bank on following conditions:

(i) As and when asked by the Court, the same shall be produced before the Court.

(ii) Bank shall not make any material change in the outward appearance of the vehicle i.e., colour etc. without prior permission of the Court.

(iii) Bank shall keep the vehicle in reasonable good working condition.

(iv) Bank, if, intends to sell or otherwise transfer the vehicle, then the same shall be done with prior intimation to the Court and by depositing the amount equal to the down payment received by the Bank or paid to the dealer for purchasing the vehicle in question.

(v) Within eight days of taking over of the possession of the vehicle, the photographs of the vehicle shall be taken by the Bank and one photograph shall be taken from each side i.e., front and side part, shall be tendered to the Court.

(vi) Bank shall furnish surety of Rs.4 lakhs for the vehicle in question.

It is clarified that the amount equal to the down payment received or paid to the dealer is a condition

precedent before transferring or selling the vehicle.

8. With the above observations and directions, present revision application is allowed. Rule is made absolute accordingly. Direct service is permitted.

(C.K.Buch,J)

Jayanti*